

- Take a confession of judgment or a power of attorney, except a power of attorney taken to effect the transfer of ownership of a motor vehicle or mobilehome at the time the loan is made. Fin C §22331.
- Take any instrument in which blanks are left to be filled in after execution. Fin C §22333.
- Enter into a contract for a loan that provides for repayment over more than specified maximum terms. Fin C §22334. This provision does not apply to loans of a bona fide principal amount of \$5000 or more.

4. [§5.26] Penalties

If a lender charges, contracts for, or receives any amount exceeding the charges permitted by these statutes or violates any other statutory provision of Fin C §§22000–22780, the contract of loan is void and no person may collect or receive any principal, charges, or recompense in connection with the transaction (see Fin C §22750) unless the lender

- Shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error despite the maintenance of procedures reasonably adapted to avoid the error (Fin C §22751(b)), and
- Notifies the borrower of the error and makes whatever adjustments in the account that are necessary to correct the error within 60 days of discovering the error for computational error (Fin C §22751(b)) and 30 days for other unintentional error (Fin C §22752(b)). No provision imposing liability under these statutes, including Fin C §§22751(a) and 22752(a), applies to any act done or omitted in good faith in conformity with any written general rule, regulation, or specific ruling of the commissioner, notwithstanding that after the act or omission has occurred, the written general rule, regulation, or specific ruling is amended, rescinded, or determined by judicial or other authority to be invalid for any reason. Fin C §22754.

V. FALSE AND DECEPTIVE PRACTICES

A. [§5.27] Consumer Legal Remedies Act (CC §§1750–1784); Transactions Covered

The purpose of the Consumers Legal Remedies Act is to protect consumers against unfair and deceptive business practices. To achieve this purpose it should be given a liberal construction. CC §1760.

The Act applies to all agreements for the sale or lease of goods or

services to any consumer. CC §§1761, 1770. It also applies to retail sellers who refuse to permit full cash or credit refunds without conspicuously displaying their policies on returns of goods. CC §1723. However, transactions for the sale or construction of an entire residence, all or part of a commercial or industrial structure, or parcels of real estate are excluded. CC §1754. The Act applies to the owners or employees of an advertising medium if it is established that they had knowledge of the deceptive methods, acts, or practices. CC §1755.

B. [§5.28] Prohibited Acts and Provisions

The Act prohibits 24 different unfair sales and advertising methods, acts, and practices under CC §1770(a):

- (1) Passing off goods or services as those of another.
- (2) Misrepresenting the source, sponsorship, approval, or certification of goods or services.
- (3) Misrepresenting the affiliation, connection, or association with, or certification by, another.
- (4) Using deceptive representations or designations of geographic origin in connection with goods or services.
- (5) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that he or she does not have.
- (6) Representing that goods are original or new if they have deteriorated unreasonably or are altered, reconditioned, reclaimed, used, or second-hand.
- (7) Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another.
- (8) Disparaging the goods, services, or business of another by false or misleading representation of fact.
- (9) Advertising goods or services with intent not to sell them as advertised.
- (10) Advertising goods or services with intent not to supply reasonably expectable demand, unless the advertisement discloses a limitation of quantity.
- (11) Advertising furniture without clearly indicating that it is unassembled if such is the case.
- (12) Advertising the price of unassembled furniture without clearly indicating the assembled price of such furniture if the same furniture is available assembled from the seller.

- (13) Making false or misleading statements of fact concerning reasons for, existence of, or amounts of price reductions.
- (14) Representing that a transaction confers or involves rights, remedies, or obligations that it does not have or involve or that are prohibited by law.
- (15) Representing that a part, replacement, or repair service is needed when it is not.
- (16) Representing that the subject of a transaction has been supplied in accordance with a previous representation when it has not.
- (17) Representing that the consumer will receive a rebate, discount, or other economic benefit, if the earning of the benefit is contingent on an event to occur subsequent to the consummation of the transaction.
- (18) Misrepresenting the authority of a salesperson, representative, or agent to negotiate the final terms of a transaction with a consumer.
- (19) Inserting an unconscionable provision in the contract.
- (20) Advertising that a product is being offered at a specific price plus a specific percentage of that price unless (a) the total price is set forth in the advertisement, which may include, but is not limited to, shelf tags, displays, and media advertising, in a size larger than any other price in that advertisement, and (b) the specific price plus a specific percentage of that price represents a markup from the seller's costs or from the wholesale price of the product. This does not apply to in-store advertising by businesses that are open only to members or cooperative organizations organized under Corp C §§12000–14182 (corporations for specific purposes) when more than 50 percent of purchases are made at the specific price set forth in the advertisement.
- (21) Selling or leasing goods in violation of CC §§1797.8–1797.86 (grey market goods, see §5.113).
- (22) Disseminating an unsolicited prerecorded telephone message without first having a live person (a) provide specified information on the caller and (b) obtain the consent of the person answering the phone. This does not apply to calls for the collection of an existing obligation or to messages generated at the request of the recipient. Nor does it apply to messages disseminated to a business associate, customer, or other person having an established relationship with the caller.
- (23) Soliciting a senior citizen as part of a home solicitation process (see CC §1761(h)) resulting in a loan encumbering the consumer's primary residence to pay for home improvements when the transaction is part of a pattern or practice in violation of either 15 USC §1639 or 12 CFR §226.32 (prohibiting certain consumer loans secured by mortgages on principal residence).
- (24) Mortgage brokers and lenders may not use a home improvement

contractor to negotiate a loan secured by the residence to finance a home improvement contract. CC §1770(b).

Any waiver by the consumer of the provisions of the Act is void and unenforceable. CC §1751. The small claims court judge should be alert for situations in which a plaintiff may have a cause of action under this Act because often plaintiffs will not be aware of it.

For an example of the applicability of the Act, see *Truta v Avis Rent-A-Car Sys., Inc.* (1987) 193 CA3d 802, 238 CR 806 (court held plaintiff had stated proper cause of action against auto rental companies for inserting unconscionable collision damage waiver provision in their rental agreements; plaintiff claimed that provision was far in excess of a competitive market and was an adhesion contract).

C. [§5.29] Relief Available; Limitations

A consumer who is damaged by any of the prohibited acts is entitled to recover

- Actual damages, but the total award of damages in a class action may not be less than \$1000. CC §1780(a)(1).
- Punitive damages. CC §1780(a)(4).
- Injunctive relief (CC §1780(a)(2)), but not in small claims court (see CCP §116.220, limiting equitable relief to rescission, reformation, restitution, and specific performance).
- Restitution of property. CC §1780(a)(3).
- Any other relief that the court deems proper. CC §1780(a)(5).
- Court costs and attorneys' fees. CC §1780(d). The court may award reasonable attorneys' fees to a prevailing defendant if it finds that the plaintiff's prosecution of the action was not in good faith. CC §1780(d).

Although attorneys' fees are only an issue in small claims appeals and not in small claims trials, when they *are* permitted under CC §1780(d), the court is not limited to the fees set out in the attorney-client agreement. See *Hayward v Ventura Volvo* (2003) 108 CA4th 509, 511–513, 133 CR2d 514.

Only a consumer who actually uses the product in question may bring an action to recover actual damages under the Consumers Legal Remedies Act (CC §1750 et seq); an organization, such as a group organized to express environmental concerns, may not recover actual damages. *Ameri-*

can Int'l Indus. v Superior Court (1999) 72 CA4th 1376, 1391, 85 CR2d 815.

A consumer who is a senior citizen or a disabled person as defined in CC §1761(f)–(g) may seek and be awarded, in addition to the remedies specified above, up to \$5000 when the trier of fact (1) finds that the consumer has suffered substantial physical, emotional, or economic damage resulting from the defendant's conduct; (2) makes an affirmative finding regarding one or more of the aggravating factors set forth in CC §3345(b); and (3) finds that an additional award is appropriate. CC §1780(b)(1). Judgment in a class action by senior citizens or disabled persons under CC §1781 may award each class member this additional amount when the trier of fact has made the required findings. CC §1780(b)(2).

A consumer may bring a class action, although probably not in small claims court, for the same relief under the requirements set forth in CC §§1752, 1781–1782. Civil Code §1781(b) establishes the exclusive criteria for class certification in suits brought under the Act; if the statutory criteria are satisfied, the court must certify the class and has no discretion to deny certification based on other considerations. *Hogya v Superior Court* (1977) 75 CA3d 122, 142 CR 325.

Any action brought under CC §1770 must be commenced not more than three years from the date of the commission of the prohibited method, act, or practice. CC §1783.

The remedies provided in the Act are in addition to any other procedures or remedies for any violation or conduct provided for in any other law. CC §1752.

D. [§5.30] Special Venue Requirements

The plaintiff must file an affidavit showing the action has been filed in the county or judicial district in which the seller resides, has a principal place of business, or does business, or in which the transaction occurred. CC §1780(c). If the plaintiff fails to file this affidavit concurrently with the filing of the complaint, the court must, on its own motion or on the motion of any party, dismiss the action without prejudice. CC §1780(c). Some judges think this affidavit requirement is not applicable in small claims court. See §5.8. However, the venue provision (CC §1780) of the Consumers Legal Remedies Act does not prevail over the general rule, which entitles a defendant to have an action tried in the county of his or her residence. *Gal-lin v Superior Court* (1991) 230 CA3d 541, 281 CR 304.

E. [§5.31] Rebate Offers

A rebate program does not violate CC §1717(a)(17) of the Consumers

Legal Remedies Act when there were a number of options for obtaining a rebate, including one in which a subsequent purchase was not required. *Kramer v Intuit, Inc.* (2004) 121 CA4th 574, 581, 18 CR3d 412. Nor is there is a violation of CC §1770(a)(17) when a rebate offered in a wireless service store requires the purchaser of a wireless phone to activate the phone with the wireless service provided in that store. *Pollard v Ericsson, Inc.* (2004) 125 CA4th 214, 221, 22 CR3d 496.

F. [§5.32] Demand for Rectification; Good Faith Defense

Thirty days or more before an action for damages is commenced, the plaintiff must serve a written demand on the seller, by certified or registered mail, return receipt requested, stating the alleged unlawful method, act, or practice and demanding rectification. CC §1782(a). The seller then has 30 days in which to rectify. Timely correction, repair, or replacement bars an action for damages by the plaintiff. CC §1782(b). Strict compliance with this notice requirement is required before the buyer may commence an action against the seller; however, the seller may waive the notice. *Outboard Marine Corp. v Superior Court* (1975) 52 CA3d 30, 124 CR 852. The plaintiff may bring an action for injunctive relief without complying with CC §1782(a). CC §1782(d). But see CCP §116.220(b), limiting equitable relief in small claims court to rescission, restitution, reformation, and specific performance.

Although intent or good faith is not relevant in determining whether an act is unlawful, the seller is not liable for damages when it can prove that the violation was unintentional and resulted from a bona fide error despite the use of reasonable procedures adopted to avoid such errors, and makes appropriate rectification. CC §1784.

VI. MOTOR VEHICLES

A. Rees-Levering Motor Vehicle Sales and Finance Act (CC §§2981–2984.4)

1. [§5.33] Scope of Act

The Rees-Levering Act applies to substantially all sales and certain bailments of motor vehicles to consumers, except mobilehomes. CC §§2981, 2981.5. It applies to the retail installment sale of an off-highway motor vehicle that is required to be registered or identified under the Vehicle Code. 71 Ops Cal Atty Gen 167 (1988) (the retail installment sale of off-highway motor vehicles exempt from registration or identification is subject